

**IN THE SUPREME COURT OF MISSISSIPPI****NO. 2023-TS-00584****ANN SAUNDERS; SABREEN SHARRIEF; and DOROTHY TRIPLETT,***Appellants***v.**

**STATE OF MISSISSIPPI; STATE OF MISSISSIPPI *ex rel.* TATE REEVES, in his capacity as Governor of the State of Mississippi; STATE OF MISSISSIPPI *ex rel.* LYNN FITCH, in her capacity as Attorney General of the State of Mississippi; HONORABLE MICHAEL K. RANDOLPH, in his official capacity as Chief Justice of the Mississippi Supreme Court; ZACK WALLACE, in his official capacity as Circuit Clerk of the Circuit Court of Hinds County, Mississippi; and GREG SNOWDEN, in his official capacity as Director of the Administrative Office of Courts,**

*Appellees.*

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**SECOND SUPPLEMENT TO THE MOTION  
FOR RECUSAL OF CHIEF JUSTICE MICHAEL K. RANDOLPH**

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During a hearing last week in the federal court challenge to House Bill 1020 and Senate Bill 2343, in which the Chief Justice was represented by counsel, the Chief Justice voluntarily approached the lectern himself three times, introduced documents, and made statements to the presiding federal judge about this litigation, the federal case, and the benefits of his prior appointments of trial court judges in Hinds County and elsewhere in the state pursuant to Section 9-1-105(2). An expedited transcript of those statements has been obtained and filed today with this Court. The day after the hearing, the undersigned requested a transcript only of Justice Randolph's comments so it could be submitted to this Court more quickly, but the court reporter advised counsel that she preferred to instead provide an expedited transcript of the entire motion

hearing held that day. Pages 53-58, 116-127, and 175-184 contain the Chief Justice's statements on the three occasions when he chose to address the presiding federal judge during that hearing.<sup>1</sup>

These statements by the Chief Justice at that federal court hearing, held on June 14, 2023, support the motion to recuse him that has been filed in this case on the ground that his impartiality "*might* be questioned by a reasonable person knowing all the circumstances." M.R.A.P. 48C(a); Canon 3(E)(1) of the Code of Judicial Conduct (emphasis added). This is for two reasons.

First, the Chief Justice proclaimed once again the benefits of his ability to appoint judges to reduce caseloads pursuant to Section 9-1-105(2), and particularly what he referred to in this hearing as the "marvelous results" in Hinds County in 2022-2023. Transcript 57. More specifically he stated:

- "[B]ecause of the corporation [sic] of the four judges of Hinds County – the four sitting judges along with the ones I appointed, here is the marvelous results, and then it points out how many cases were – I think – I believe in '22 through '23, I think 667 cases were disposed of as a result of that." Tr. 56–57.
- "As a result of the Chief Justice working to resolve and help Hinds County, James Bell and – along with – and with the approval of LaRita Cooper-Stokes, who the family asked me to speak at her funeral, and I did, is the kind of relationship that we had, along with her and Bell and Dickinson caused – and Zack Taylor – Zack, the Circuit Clerk, resolved and removed from the dockets of the Hinds County county courts 115,000 cases as a result of the efforts that we were doing." Tr. 123–24.
- "And the only complaints [about the appointments] that I heard was from Betty Sanders. Judge Sanders complained because she had to sit in a courtroom that rain was coming in on her head and getting the equipment wet, and because people were getting pulled out from being bailiffs. Other judges, they weren't given space and weren't accommodated. So that was the only complaints, but it was not about voting rights or racial discrimination, none of that. It was about they won't give us the ability to succeed in this noble cause to reduce the number of incarcerated people, so

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<sup>1</sup> Because the third occasion primarily involved discussions about some exhibits that the Chief Justice had introduced, there is nothing from those pages cited in this supplement.

the guilty ones go to prison and the innocent ones goes home. That's what I'm about.” Tr. 58.

As mentioned in Appellants’ motion to recuse, the Chief Justice is using these appointments to pursue the interests of justice as he sees it. But his public reiteration just last week of the “marvelous results” stemming from his appointment of judges in Hinds County in pursuit of a “noble cause” that is “what I’m about” simply reinforces the notion that he is so personally invested in the ability to make appointments that his impartiality might be questioned by a reasonable person. Although he was speaking about space limitations at the courthouse, it is clear that the Appellants’ constitutional challenge, if successful, will also deprive him, at least for the time being, of “the ability to succeed in this noble cause.”

Second, the Chief Justice also publicly accused Appellants’ counsel in this case (and plaintiffs’ counsel in the federal case) of including him as a defendant in order to seek his recusal and stated that their actions were part of a “circus.” Tr. 120.

“And in the meantime, I have got to get ready. I think there is a motion for recusal on me on the Supreme Court pending that I have got to address. There is also the full hearing on – for the full court on July 3rd got to get ready for. The bar comes right after that. And it is just on and on. So, yeah. There is a lot of things I would rather be doing than sitting around waiting for them to fumble through their papers and try to keep the Chief Justice in court, and I imagine it has something to do with that motion for recusal that I see in the other court. That is what –because these cases were filed three days apart. And I have thought from the very beginning that these cases were brought collectively in a way, one in federal, one in state. One charges discrimination; one didn’t. One did 1983; one didn’t. Trying to keep all options open. So that is what I have been facing.” Tr. 119-120.

In response to a question from the federal judge about the Chief Justice’s use of the word “circus” earlier in the hearing, the Chief Justice said:

“I was referring to the fact that this theory, this attempt to involve me in litigation on the constitutionality of the statute is nowhere in the books or the manuals, anyplace found anywhere else, and that's the circus that I am referring to that I was brought into this case for reasons that I am sure will never be fully revealed. . . . The case was never about me. It was never about Mike Randolph. It was always

about the office of judges all over the states, all over America, to be protected from getting involved so that parties could then seek the recusals and then get them out of the way and then pick and select who they want to try their case and make the judge – make the judge a participant in litigation – in litigation. We are supposed to be and I always tried to be a referee. A referee. And that is what we are. And I felt that that is a circus, and maybe that is a bad term. I don't know. I know there is no legal precedent for what is occurring in this case or in the case in state court as well, that I have found, nor have they shown.” Tr. 126-127.

As has been stated many times, the Chief Justice was included as a defendant in the state court action below because the legislature named him as the person who would make the appointments that the Appellants believe are unconstitutional. It made sense to name him as a defendant so he could be enjoined from making those appointments. If the legislature had instead given that authority to the Governor, he would have been sued instead. If they had given it to a clerk and told the clerk to draw names out of a hat, the clerk would have been sued instead. But they gave the Chief Justice the sole authority to appoint these judges and there was a reasonable basis to include him as a defendant. Rather than simply express his disagreement regarding the legal issue of whether he should have been sued, the Chief Justice took to the lectern and publicly accused Appellants’ counsel of doing this not for legitimate motives, but to “pick and select who they want to try their case,” and he described their actions as part of a “circus.” Given this voluntary public accusation against Appellants’ counsel, a reasonable person might have doubts about his impartiality when ruling on the case that these counsel brought and that is now in this Court.

In summary, these public statements last week by the Chief Justice, when viewed in tandem with the statements described in Appellants’ original motion, demonstrate that the Chief Justice’s impartiality in this case “might be questioned by a reasonable person knowing all the circumstances.” M.R.A.P. 48C(a); Canon 3(E)(1) of the Code of Judicial Conduct.

Respectfully submitted,

s/ Robert B. McDuff

Robert B. McDuff, MSB #2532

Paloma Wu, MSB #105464

Mississippi Center for Justice

210 E. Capitol Street, Ste 1800

Jackson, MS 39201

(601) 709-0857

[rmcduff@mscenterforjustice.org](mailto:rmcduff@mscenterforjustice.org)

[pwu@mscenterforjustice.org](mailto:pwu@mscenterforjustice.org)

Cliff Johnson, MSB #9383

MacArthur Justice Center

University of Mississippi School of Law

481 Chuck Mullins Drive

University, MS 38677

(662) 915-6863

[cliff.johnson@macarthurjustice.org](mailto:cliff.johnson@macarthurjustice.org)

Jacob W. Howard, MSB #103256

MacArthur Justice Center

P.O. Box 1447

Cleveland, MS 38732

(769) 233-7538

[jake.howard@macarthurjustice.org](mailto:jake.howard@macarthurjustice.org)

Brenda Wright\*

Brittany Carter\*

NAACP Legal Defense & Educational Fund

40 Rector Street, Fifth Floor

New York, NY 10006

(212) 617-1657

[bwright@naacpldf.org](mailto:bwright@naacpldf.org)

[bcarter@naacpldf.org](mailto:bcarter@naacpldf.org)

Tanner Lockhead\*

NAACP Legal Defense & Educational Fund

700 14<sup>th</sup> Street, Ste. 600

Washington, DC 20005

(929) 536-3943

[tlockhead@naacpldf.org](mailto:tlockhead@naacpldf.org)

Joshua Tom (Miss. Bar No. 105392)

ACLU of Mississippi

P.O. Box 2242

Jackson, MS 39225

(601) 354-3408  
[jtom@aclu-ms.org](mailto:jtom@aclu-ms.org)

*Counsel for Appellants*

\*Admitted *pro hac vice*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing motion with the Clerk of the Court using the MEC system, which sent notification of such filing to all counsel of record.

Scherrie L Prince  
Prince & Associates, PLLC  
P.O. Box 320937  
Flowood, MS 39232  
601-206-0284  
scherrie@princelawassociates.com

Anthony Simon  
621 East Northside Drive  
Jackson, MS 39206  
601-362-8400  
anthonysimonpllc@bellsouth.net

Pieter Teeuwissen  
P.O. Box 16787  
Jackson, MS 39236  
adwoodward@bellsouth.net

Mark Albin Nelson  
Nelson Law PLLC  
7 Woodstone Plaza, Ste. 7  
Hattiesburg, MS 39402  
601-602-6031  
mark@nelsonfirm.law

Ned Andrew Nelson  
Nelson Law PLLC  
7 Woodstone Plaza, Ste. 7  
Hattiesburg, MS 39402  
601-602-6031  
ned@nelsonfirm.law

Justin L. Matheny  
Office of the Mississippi Attorney General  
P. O. Box 220  
Jackson, MS 39205  
601-359-3825  
justin.matheny@ago.ms.gov

Wilson Douglas Minor  
Office of the Mississippi Attorney General  
P. O. Box 220  
Jackson, MS 39205  
601-359-6279  
wilson.minor@ago.ms.gov

Rex M Shannon, III  
Office of the Mississippi Attorney General  
Post Office Box 220  
Jackson, MS 39205  
601-359-4184  
rex.shannon@ago.ms.gov

Gerald L. Kucia  
Office of the Mississippi Attorney General  
Post Office Box 220  
Jackson, MS 39205  
601-359-3680  
gerald.kucia@ago.ms.gov

This, the 22<sup>nd</sup> day of June, 2023.

/s Robert B. McDuff  
Robert B. McDuff